

COUNCIL OF THE CITY OF SEAT PLEASANT, MARYLAND

RESOLUTION NO. 09-22

Introduced By **City Council**

Date Introduced **May 29, 2009**

Amendments Adopted

Date Adopted **May 29, 2009**

Date Effective **May 29, 2009**

A RESOLUTION concerning


Community Legacy Funds Agreement – Seat Pleasant Community Development Corporation

FOR the purpose of approving an Amendment to Community Legacy Funds Agreement between the City of Seat Pleasant and the Seat Pleasant Community Development Corporation and authorizing the Mayor to sign this Amendment on behalf of the City; and matters generally related thereto.


EXPLANATORY STATEMENT: On March 26, 2009 the Seat Pleasant City Council adopted Resolution No. 09-13 to approve a Community Legacy Funds Agreement (“Agreement”) between the City of Seat Pleasant (“City”) and the Seat Pleasant Community Development Corporation (“SPCDC”). Pursuant to Resolution No. 09-13, the City and SPCDC entered into the Agreement on March 26, 2009. The City and SPCDC desire to amend the Agreement, and the purpose of this Resolution is to approve the amendment. Now, therefore,

SECTION I. BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SEAT PLEASANT, that the Amendment to Community Legacy Funds Agreement between the City and SPCDC attached to this Resolution is approved and the Mayor of the City is authorized to execute that Amendment to Community Legacy Funds Agreement on behalf of the City.

ATTEST:


Dashaun N. Lanham, City Clerk

COUNCIL OF THE CITY OF
SEAT PLEASANT


Brian K. Shivers, President

AMENDMENT TO COMMUNITY LEGACY FUNDS AGREEMENT

THIS AMENDMENT TO COMMUNITY LEGACY FUNDS AGREEMENT ("Amendment") entered into this 29th day of May, 2009, by and between City of Seat Pleasant ("City"), a municipal corporation of the State of Maryland, and Seat Pleasant Community Development Corporation, ("SPCDC"), a Maryland non-profit corporation. The City and the SPCDC hereinafter are referred to sometimes collectively as "the Parties" and sometimes individually as a "Party".

EXPLANATORY STATEMENT: On March 26, 2009, the City and SPCDC entered into a Community Legacy Funds Agreement ("Agreement"). The City and SPCDC desire to amend certain parts of the Agreement, as reflected in this Amendment. Except as modified by this Amendment, the Agreement is to continue in full force and effect.

NOW, THEREFORE, in consideration of the EXPLANATORY STATEMENT, which is a material part of this Amendment and not merely prefatory, and other good and valuable considerations, the receipt and adequacy of which are acknowledged by the Parties, the City and the SPCDC agree as follows:

1. Paragraphs 5, 6 and 11 of the Agreement are revised to read as follows:

5. Funding of the Project.

a. The Parties understand that the SPCDC is responsible for undertaking the Project at its sole cost and expense, subject to reimbursement by the City from Community Legacy funds available to the City under the 2006 Agreement and the 2007 Agreement. The City shall have no liability to the SPCDC for the funding of the Project except to the extent of Community Legacy funds available to the City under the 2006 Agreement and the 2007 Agreement as provided for under Paragraphs 5 and 6 of this Agreement. However, the City, in the sole discretion of its City Council, from time to time may advance funds to SPCDC for the Project, subject to repayment to the City as provided in other provisions of this Agreement.

b. The SPCDC shall provide to the City, on a timely basis, requests for reimbursement for eligible Project costs and expenses including costs of acquisition of the Property and costs of rehabilitation of the Property, except that, to the extent allowed by DHCD, SPCDC may request, and the City may provide, advance funding for acquisition of the Property and other Project costs. Where the City has provided advance funding to SPCDC, SPCDC shall provide to the City, on a timely basis, all necessary information and documentation to enable the City to seek reimbursement for eligible Project costs and expenses from DHCD. SPCDC's costs and expenses of sale of the Property (e.g., realtor's commission if any, transfer and recordation taxes if any, carrying costs, pro-

rations, etc.) shall be paid from the proceeds of sale. Along with each request for reimbursement the SPCDC shall provide to the City supporting documentation justifying each request for reimbursement. With respect to each request for reimbursement and for funds advanced by the City SPCDC shall provide such further documentation as the City or DHCD may require. DHCD shall be solely responsible for determining whether a cost of the Project is eligible for reimbursement from Community Legacy funds under the 2006 Agreement or the 2007 Agreement.

i. After the SPCDC engages a contractor or contractors to perform all rehabilitation work on the Property, the City and the SPCDC shall agree upon a draw schedule under which the SPCDC shall pay its contractor(s). Any such draw schedule shall be developed on a percentage of completion payment basis, and shall provide for a retainage of not less than 10% of the contract price to be withheld until completion of all punch list items.

c. The City agrees to submit a request for payment to DHCD promptly after the City receives a complete request for reimbursement from the SPCDC and after the City receives all information and documentation necessary for the City to seek reimbursement from DHCD for funds advanced by the City to SPCDC for the Project. The SPCDC must submit to the City all requests for reimbursement, and all information and documentation required for the City to seek reimbursement for funds that the City advanced to SPCDC, in sufficient time for the City to submit to DHCD requests for payment on or before June 30, 2009, except as otherwise may be permitted by DHCD in writing.

d. The City shall remit to the SPCDC all funds reimbursed for monies paid by SPCDC promptly after receipt from DHCD. SPCDC shall place all such funds into a separate bank account, from which they will be disbursed by SPCDC. However, the City shall retain all funds reimbursed by DHCD for monies advanced by the City to SPCDC for the Project.

e. Promptly after completion of the Project, but not later than April 1, 2010, the SPCDC, at its expense, shall undertake an audit of the Project by a Certified Public Accountant.

f. Upon completion of the Project, the City shall seek from DHCD a release of any obligation to repay any portion of the Community Legacy Funds under the 2006 Agreement and the 2007 Agreement in excess of \$20,000 under each Agreement.

g. The SPCDC agrees to refund to the City all Community Legacy funds received from the City found to have been used for ineligible and/or unapproved programs or activities. These repayments will be made to the City or State within thirty (30) days of notification by the City of the ineligible expenditure.

h. After the SPCDC engages a contractor or contractor to perform all rehabilitation work on the Property, the SPCDC shall provide a draw schedule to the City under which the SPCDC shall pay its contractor(s). Any such draw schedule shall be developed on a percentage of completion payment basis, and shall provide for a retainage of not less than 10% of the contract price to be withheld until completion of all punch list items

6. Proceeds from the Sale of the Property and Revolving Fund. Upon sale of the Property pursuant to Paragraph 3 above, the SPCDC shall distribute the net proceeds from the settlement of the sale as follows:

a. The SPCDC shall direct the closing agent to pay the sum of \$40,000 to the City to repay DHCD the sum of \$20,000 required under the 2006 Agreement and the sum of \$20,000 required under the 2007 Agreement. The SPCDC also shall direct the closing agent to pay to the City the amount of all funds advanced by the City to the SPCDC for the Project but not reimbursed to the City by DHCD. After retaining such sum as provided in Paragraph 6.b., the SPCDC shall hold in escrow the remaining amount of net proceeds subject to the following conditions:

i. If, and at such time as, DHCD releases the City's obligation to repay all or any portion of the Community Legacy Funds under the 2006 Agreement and the 2007 Agreement in excess of \$20,000 under each Agreement, the SPCDC may use so much of the escrowed funds as has been released by DHCD as provided in Paragraph 6.c. below. To the extent that DHCD does not release the City's obligation, the SPCDC shall repay to the City all or any part of the escrowed funds necessary for the City to repay DHCD at such time as DHCD shall direct.

b. The SPCDC shall retain the sum of \$10,000 as a management fee for the administration of the Project, except that if the Project is completed in a timely manner so that DHCD releases the entire sum of \$195,000 to the City under the 2006 Agreement and the 2007 Agreement for the funding of Project, the SPCDC shall be entitled to retain the sum of \$22,000 as its management fee.

c. All net proceeds of sale remaining after payment of those amounts provided for under Paragraphs 6.a. and 6.b. above shall be deposited by SPCDC into a revolving fund, segregated from all other funds of the SPCDC, to be used by SPCDC exclusively for the future acquisition, rehabilitation, operational cost and resale of additional properties in the City of Seat Pleasant giving first preference to residents of the City of Seat Pleasant whose household incomes do not exceed 80% of the area median income, subject to the same deed restrictions as set forth in Paragraph 3 above.

i. The SPCDC shall pay into the revolving fund all net proceeds from the sale of properties whose purchase and rehabilitation has been paid for in whole or part from the revolving fund.

ii. Beginning at the end of the first March, June, September or December following the deposit of monies into the revolving fund, and each 90 days thereafter, and at such other times as the City may require, the SPCDC shall provide the City with a written report and accounting as to the status of projects and the use of the revolving funds since the previous report. Each written report shall provide information for the reporting period on applicant approvals/denials; projects/programs approved; fund disbursements; project bidding information; property sales; contractor/subcontractor utilization (contract amounts, ethnicity, addresses, and amount billed and paid) and other information as appropriate and required by the Community Legacy program guidelines.

iii. The SPCDC, at the SPCDC's expense, shall obtain and provide to the City annually within 60 days after the end of the SPCDC's fiscal year an audit of the revolving fund conducted by a certified public accountant.

iv. Upon request of the City, the SPCDC shall attend such meetings as may be requested to explain the activities of the SPCDC with respect to the revolving fund and such other matters as reasonably may be requested.

v. If the SPCDC does not provide the City with reports or audits required by clauses 6.c.ii. and iii. in a timely manner, or if the SPCDC, without reasonable justification, repeatedly does not attend meetings with the City as requested pursuant to clause 6.c.iv., the SPCDC, upon and within 30 days after request of the City, shall deliver to the City, without recourse, all monies then remaining in the revolving fund, up to the amount deposited into the revolving fund pursuant to this Paragraph 6.c., for the City to use at it determines.

vi. If the SPCDC decides to terminate the revolving fund, or upon dissolution of the SPCDC or forfeiture of its corporate charter, or upon termination of this Agreement, the SPCDC shall deliver to the City promptly, without recourse, all monies then remaining in the revolving fund for the City to use at it determines.

11. Insurance.

a. From the time that the SPCDC enters into a contract to purchase the Property until the SPCDC closes on its sale of the Property after the completion of rehabilitation of the Property, and from and after the time that the SPCDC enters into a contract to purchase any other property with monies from the revolving fund established pursuant to Paragraph 6.c. of this Agreement until

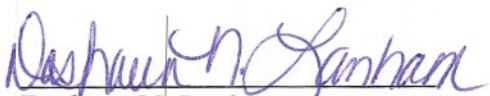
the SPCDC closes on its sale of such property after the completion of rehabilitation, the SPCDC shall maintain, and ensure that its contractors and subcontractors maintain, the insurance provided in this Paragraph 11. The SPCDC shall maintain fire and extended coverage insurance on the Property and Project, and on any other property purchased with money from the revolving fund, satisfactory to and with loss payable to the City in the amount of at least One Hundred Thousand Dollars (\$100,000) plus the outstanding balance on any and all mortgages, deeds of trusts or other instruments wherein payments due and payable are secured by the Property or any future property or the full replacement cost of the Project or any future project, whichever is greater. The SPCDC and its contractors and subcontractors shall maintain Worker's Compensation Insurance in compliance with and as required by the laws of the State of Maryland. The SPCDC shall maintain commercial general liability insurance with at least One Million Dollars (\$1,000,000) combined single-limit coverage on an occurrence basis covering all premises and operations and including personal injury, independent contractual liability and products and completed operations.

b. The SPCDC shall furnish the City with certificates evidencing the type, amount, class of operations and effective dates of expiration of the insurance policies required by Paragraph 11.a. The City shall be named as an additional insured on all such insurance policies except for worker's compensation policies. The insurance coverage certificates shall include substantially the following statement: "The insurance covered by this certification shall not be canceled or materially altered, except after thirty (30) consecutive calendar days from when a written notice has been delivered to the City of Seat Pleasant, which shall be named as an additional insured in all insurance policies."

IN WITNESS WHEREOF, and as of the date first above written, the City and the SPCDC, by their respective authorized officers, have signed and sealed multiple counterparts of this Amendment, any of which shall be deemed to be an original.

ATTEST:

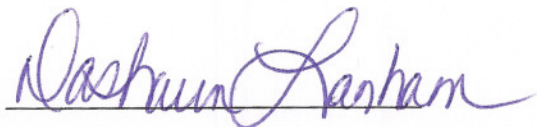
CITY OF SEAT PLEASANT



Dashaun N. Lanham
City Clerk

By:  (SEAL)
Eugene W. Grant, Mayor

ATTEST:

SEAT PLEASANT COMMUNITY
DEVELOPMENT CORPORATION



By:  (SEAL)
Koko Barnes, Executive Director